

UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF
WASHINGTON AT TACOMA

In re:

CASE NO.: 23-41213-MJH

Scott Matthew Kenyon, and
Karin Anastasia Kenyon,
Debtors.

OBJECTION TO EXEMPTIONS
WITH CERTIFICATE OF SERVICE

Creditors, Bjorn Anderson, Jennifer Palau and Neil Ross, Edmund and Jennifer Burk.
Brett Heersink and Wendy Yocom Janice Manson & Leanne Headley, and Max Fields
(collectively "Creditors"), through their undersigned attorney (hereinafter, "Creditors'
Counsel"), hereby object to the exemption claimed by the Debtors, Scott Matthew Kenyon, and
Karin Anastasia Kenyon ("Debtors"), in the real property located at 3315 N. 35th St. Tacoma,
WA 98407 (the "Property").

Debtors filed their Chapter 7 petition on July 27, 2023 and Schedule C was filed on
August 11, 2023. Debtors claimed the Property exempt under Washington's homestead
exemption, RCW 6.13 et seq., in the amount of \$554,400.00

On information and belief, Debtors had operated a construction company for years and
collected hundreds of thousands of dollars from unsuspecting consumers for whom Debtors did
not complete projects as promised.

1 On information and belief, 1) Debtors and Debtors' business entity commingled property
2 rights or interest were intertwined to such an extent that the business entity and Debtors
3 functioned as one single entity, and 2) to regard Debtors and Debtors' business entity as separate
4 would aid in the consummation of a fraud or wrong upon others.
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6 On information and belief, Debtors have diverted those funds, which were collected for
7 the purpose of completing the consumers' projects, to the Debtors' own use.
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9 On information and belief, Debtors have used those funds to improve their residence
10 located at 3315 N. 35th St. Tacoma, WA 98407.
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12 On information and belief, the alleged equity in the Property was created by funds which
13 belong to consumers; thus, Creditors claim that such uses of creditors' funds have established a
14 constructive trust or an equitable lien in Debtors' alleged equity in their residence. "A
15 constructive trust arises where a person holding title to property is subject to an equitable duty to
16 convey it to another on the ground that he would be unjustly enriched if he were permitted to
17 retain it." *Baker v. Leonard*, 120 Wash. 2d 538, 547-48, 843 P.2d 1050 (1993). The Creditors
18 made payments to Debtors or to Debtors' entity and Debtors retained those payments at the
19 Creditors' expense because Debtors did not complete projects as promised. Therefore, the
20 alleged equity does not qualify to be protected under Washington's homestead exemption.
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23 On information and belief, Debtors were unjustly enriched at the expense of Creditors.
24 Creditors assert that (1) Creditors conferred benefits (payments) on Debtor; (2) Debtor received
25 the benefit and had an appreciation or knowledge of the benefit; and (3) Debtors accepted or
26 retained the benefits under circumstances that make it inequitable for the receiving party
27 (Debtors) to retain the benefit without paying its value. As mentioned above, Debtors did not
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1 deliver on the projects as promised, therefore, they were unjustifiably and unjustly enriched by
2 the Creditors.

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4 On information and belief, Debtors made numerous fraudulent transfers. Under the
5 Uniform Fraudulent Transfer Act (“UFTA”), a transfer may be fraudulent under one of two
6 general circumstances. First, a transfer made by a debtor with actual intent to hinder, delay, or
7 defraud any creditor is fraudulent. [RCW 19.40.041\(a\)\(1\)](#). Second, a transfer made by a debtor
8 without adequate consideration can be constructively fraudulent when (1) the debtor was
9 engaged in a business or a transaction for which the remaining assets of the debtor were
10 unreasonably small in relation to the business or transaction, [RCW 19.40.041\(a\)\(2\)\(I\)](#), or (2) the
11 debtor made the transfer without receiving a reasonably equivalent value in exchange for the
12 transfer and the debtor was insolvent at that time or the debtor became insolvent as a result of the
13 transfer, [RCW 19.40.051\(a\)](#).

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15 Under 11 USC § 522 (o)(4) regarding a homestead claim, that claim,

16 shall be reduced to the extent that such value is attributable to any portion of any
17 property that the debtor disposed of in the 10-year period ending on the date of
18 the filing of the petition with the intent to hinder, delay, or defraud a creditor and
19 that the debtor could not exempt, or that portion that the debtor could not exempt,
20 under subsection (b), if on such date the debtor had held the property so disposed
21 of.

22 On information and belief, the value of Debtors’ homestead property is attributable to
23 portions of property (payments from the Creditors) that Debtors disposed of within the 10-year
24 period prior to the filing of their bankruptcy petition with the intent to hinder, delay, or defraud
25 Creditors and that therefore Debtors cannot exempt that portion of the claimed homestead
26 because Debtors had held the property of Creditors and so disposed of it to Debtors benefit.

27 Additionally Creditors object to Debtors’ claim of exemptions listed for 2020 Ford
28 Explorer, 2018 Ford 150, 1998 Mercedes, 1994 Ford F-150, 2001 Homemade Utility Trailer,
29 2009 Enclosed Utility Trailer, and 401(k) to the extent that equity in those assets are derived
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1 from or traceable to the funds of creditors and/or the alleged equity in their residence which was
2 utilized to fund the 401(k) account or create equity in those assets.

3 Creditors reserve the right to assert any other basis for objection to exemptions as
4 permitted by law or fact.
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6 Dated this 27th day of September, 2023

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8 By: /S/ Masafumi Iwama
9 Masafumi Iwama, WSBA #40821
10 Attorney for Creditors.
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12 CERTIFICATE OF SERVICE

13 The undersigned hereby certifies under penalty of perjury under the laws of the State of
14 Washington that the following is true and correct:

15 That on September 27, 2023, I deposited in the United States mail, first class postage
16 prepaid, a copy of the Objection to Exemption addressed as follows:
17

18 Scott Matthew Kenyon, and
19 Karin Anastasia Kenyon
20 3315 N. 35th St.
Tacoma, WA 98407

Brett L Wittner
Morton McGoldrick, P.S.
820 A Street, Suite 600
Tacoma, WA 98402

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22 By: /S/ Masafumi Iwama
23 Masafumi Iwama, WSBA #40821
24 Attorney for Creditors.
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